SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION, APPELLANT,

vs.

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK

INDEX.

	Original	Print
Record appeal to Court of Appeals of New York	1	1
Statement under Rule 234 (omitted in printing)	1	
Notice of appeal to Appellate Division—Supreme Court New York	2	1
Complaint	3	1
Answer	17	10
Stipulation presenting isssues to special term	18	11
Judgment at special term	23	14
Order for judgment at special term	27	16
Opinion of Mr. Justice Murray	30	19
Stipulation waiving certification (omitted in printing)	44	
Judgment of reversal entered upon order of Appellate Division	46	28
Order of reversal in Appellate Division	47	28
Opinion of Appellate Division, Bliss, J.	48	29
Notice of appeal to the Court of Appeals	45	27
Opinion of Court of Appeals, Lehman, J.	55	33
Remittitur of Court of Appeals	64	40
Order on remittitur of Court of Appeals	66	41
Judgment on remittitur of Court of Appeals	68	42

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	Original	Print
Record on appeal to Court of Appeals of New York—Continued		
Petition for appeal, assignment of errors and prayer for reversal	70	43
Order allowing appeal	75	47
Citation and service (omitted in printing)	77	
Praecipe for transcript of record	79	48
Clerk's certificate (omitted in printing)	82	
Statement of points to be relied upon and designation of portions of record to be printed	83	49
Order postponing further consideration of the question of jurisdiction	85	50

[fol. 1-2]

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

RAILWAY MAIL ASSOCIATION, Plaintiff,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Defendants.

NOTICE OF APPEAL

To Dugan & Dugan, Attorneys for Plaintiff, 90 State Street, Albany, New York. And Albany County Clerk:

Please Take Notice, that the defendants above named (the defendant Edward S. Corsi having recently been appointed Industrial Commissioner and thus succeeded the former defendant, Michael J. Murphy, as Acting Industrial [fol. 3] Commissioner) hereby appeal to the Appellate Division, Third Department, from the order and judgment herein entered and filed in Albany County Clerk's office on November 24, 1943, and this appeal is from each and every part of such order and judgment.

November 30, 1943.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Defendants.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

[Title omitted]

COMPLAINT

Plaintiff for a cause of action herein through Dugan & Dugan, its attorneys alleges as follows:

[fol. 4] 1. That the defendant, Frieda S. Miller, now is and was at the time herein stated the Industrial Commissioner of the State of New York duly appointed and acting and as such is the head of the Department of Labor under the Labor Law of the State of New York.

2. That the defendant, John J. Bennett, Jr., is the Attorney-General of the State of New York duly elected and acting as such; that under Section 62 of the Executive Law of the State of New York it is the duty of the Attorney-General to prosecute and defend all actions and proceedings in which the State is interested, and to have charge and control of all the legal business of the departments and bureaus of the State or of any office thereof which requires the services of an attorney or counselor.

3. That the plaintiff now is and was at all the times hereinafter mentioned a foreign corporation organized under the laws of the State of New Hampshire and having its principal office at the City of Portsmouth in said State of New Hampshire. That it is organized and established, among other purposes, to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit.

4. That the other enumerated objects contained in the charter of the plaintiff are as follows: to promote closer social relationship among Railway Postal Clerks, to better enable them to perfect any movement that may be for their [fol. 5] benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provision for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age.

5. That for the purpose of administering the business and fraternal affairs of the Railway Mail Association there are established and maintained a National Association, Division Associations and Branch Associations; that the Division Associations are established and maintained in areas in accordance with the division of the Railway Mail Service conducted by the United States of America and with Branch Associations established within the areas and jurisdictions of said Division Associations.

6. That under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians.

7. That appointments and promotions in the Railway Mail Service of the United States are made under and pursuant to the Civil Service Laws of the Government of the United States.

8. That the plaintiff carries on and conducts its business and fraternal affairs through the Division and Branch Associations aforesaid and with the permission of various [fol. 6] States of the United States, among which is the State of New York, and that within such State of New York there are established and maintained thirteen Branch Associations located in different parts of said State.

9. That under the Constitution of the plaintiff, Article IV, the National Convention of the plaintiff is the supreme executive, legislative and judicial body of the order and possesses and exercises the power to make a Constitution, laws, rules and regulations for the government of the National Association, and of all Division Associations and Branch Associations; and to annul, repeal, modify, revise and change the same from time to time; also to provide rules for the issuance of Charters to Division Associations and Branch Associations; and provide for its own support, and do all other legitimate acts proper or necessary to promote the welfare of the Railway Mail Association and to control its funds.

10. That said Constitution provides further that Division Associations and Branch Associations shall adopt a Constitution, by-laws, rules and regulations not inconsistent with the provisions of the plaintiff's Constitution, and may amend, repeal, modify, revise and change the same from time to time, and that no Division or Branch Constitution or amendment thereto shall become operative or in force until approved by the Executive Committee of the Railway Mail Association.

11. That the plaintiff by its Constitution provides for and selects an Executive Committee to conduct the business [fol. 7] and affairs of the plaintiff in the interim between National Conventions which Committee is the supreme executive and judicial body of the plaintiff during the period between holdings of its National Convention; that such National Conventions are appointed to be held biennially in the odd numbered years and that the last National Convention was held in October, 1941, and that no National

Convention is appointed to be held until 1943, and that said Executive Committee has authorized the commencement of this action for the purpose of having the rights of the plaintiff declared and established in the declaratory judgment sought herein.

12. That membership in the Railway Mail Association is comprised of two classifications; one of which is designated as general or non-beneficiary membership, and the other as beneficiary or full membership.

That the beneficiary members contribute to a benefit fund established by the levy upon said beneficiary members of assessments which benefit fund is created and maintained for the purpose of paying claims of such beneficiary members or their beneficiaries resulting from death or disability occasioned to said beneficiary members through external, violent and accidental means.

That the entire membership in the Railway Mail Association comprises upwards of 22,000 members, 99% of whom hold beneficiary or full membership in said Association.

[fol. 8] 13. That the Branch Associations of said Railway Mail Association have the right, subject only to the terms and limitations contained in the Constitution of the Railway Mail Association, to pass upon applications for and to elect and initiate applicants into membership in the Railway Mail Association.

14. That under the provisions of Article 20 of the Labor Law of the State of New York, being chapter 443 of the laws enacted in 1937, it is provided under Subdivision 5 of Section 701, that,

> "The term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

15. That by Section 715 of the said Labor Law, it is provided that,

> "The provisions of this article shall not apply to the employees of any employer who concedes to and

agrees with the board that such employees are subject to and protected by the provisions of the National Labor Relations Act or the Federal Railway Labor Act, or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

[fol. 9] 16. That by Chapter 9 of the Laws of the State of New York for the year 1940, Article 4, of the Civil Rights Law of the State of New York was amended by adding thereto a new section known as Section 43 which reads as follows:

"Discrimination by labor organizations prohibited. As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

17. That Section 41 of the Civil Rights Law of the State of New York now in force provides as follows:

"Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any [fol. 10] of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any

of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment."

18. That by Section 45 of said Civil Rights Law, being Chapter 677 of the Laws of 1942 and effective on May 6, of said year, it is provided that:

[fol. 11] "The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries."

19. That certain officers and members of Branch Association of the Second Division of the Railway Mail Association in the city of New York have indicated an attitude to accept membership in the Railway Mail Association by admitting applicants to membership in such Branch Association contrary to and in violation of Artiele III of the Constitution of plaintiff and have initiated correspondence with the defendant, Frieda S. Miller as Industrial Commissioner of the State of New York, and raised the question of the legal right of the plaintiff to insist upon the observance of the provisions of Article III of plaintiff's

Constitution within the State of New York; that said Industrial Commissioner has sought and received from the Attorney-General of the State of New York his advice to the effect that the plaintiff herein is a labor organization within the meaning and contemplation of Chapter 9 of the Laws of 1940 of the State of New York and comes within the purview of the Labor Law and the Civil Rights Law of the State of New York and that Article III of the plain-
[fol. 12] tiff's Constitution is invalid and unenforceable within the State of New York and that the plaintiff has no valid or legal right to deny to any applicant, otherwise duly qualified, membership in the plaintiff's organization by reason of his race, color or creed.

20. That acting upon such advice the defendant, Frieda S. Miller as said Industrial Commissioner of the State of New York, has requested the plaintiff to advise her for the completion of the official records on this matter in the office of the Commissioner of Labor of the future policy of the plaintiff's Branch Associations within the State of New York with reference to compliance with the Civil Rights Law and the Labor Law aforesaid.

21. That plaintiff has notified the defendant, Frieda S. Miller as such Industrial Commissioner of the State of New York, in reply to her request aforesaid that the Civil Rights Law and Labor Law aforementioned do not apply to the plaintiff or its Branch Associations and if sought to be applied would constitute and be a violation of the Constitution of the United States and the Constitution of the State of New York and further notified the said Commissioner of plaintiff's intention to bring action for a declaratory judgment of its rights and legal relations in the premises.

22. Upon information and belief plaintiff alleges that it is not a labor organization within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the
[fol. 13] State of New York aforesaid but on the contrary is a membership corporation authorized to, and carrying on the business of a fraternal beneficiary association for the benefit of its members and their beneficiaries and not for profit.

That plaintiff draws its membership from male clerks engaged in the Railway Mail Service of the United States

Government; that such Railway Mail Service does not involve industrial enterprise; that appointments and promotions in such Railway Mail Service are regulated and controlled by the laws of the United States; that neither the plaintiff nor any of the male Railway Postal Clerks is engaged in industrial enterprise but its members are and constitute a class of Civil Service employees of the United States Government engaged in and conducting a governmental function exclusive to the Government of the United States and who possess certain peculiar rights and privileges to security and protection in such Government Service and have not the right to strike to enforce any grievance in relation to their service or employment in the Railway Mail Service.

23. That the defendant, Frieda S. Miller as such Industrial Commissioner of the State of New York, is asserting that the aforesaid provisions of the Labor Law and the amendments to the Civil Rights Law as aforesaid apply to and are controlling upon the plaintiff and its Division and Branch Associations and members within the State of New York, and that plaintiff is a labor organization within the [fol. 14] meaning of said statutes and that because thereof, Article III of the Constitution of plaintiff is invalid and without force or effect within the State of New York; that an actual controversy exists between the parties hereto as to their rights and legal relations arising out of and as to the application to plaintiff of the aforementioned Civil Rights and Labor Laws involving public interests, including the interest of the plaintiff, and it is necessary and expedient that the respective rights of the parties be determined without delay and that adequate relief is not presently available through other forms of action.

24. That the provisions aforesaid of the Civil Rights Law if sought to be applied against the plaintiff, its Division and Branch Associations and its members would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the plaintiff and its members, and its Division and Branch Associations due process and equal protection of law and would be and constitute an unlawful and unreasonable abridgement of the property rights of the plaintiff and its Division and Branch Associations, and would offend the due process provisions of the Fifth and

Fourteenth Amendments of the Constitution of the United States in that said provisions of the Labor Law and of the Civil Rights Law of the State of New York would create arbitrary, capricious and unreasonable classifications, and would deny to the plaintiff and its members, and its Di- [fol. 15] vision and Branch Associations within the State of New York the equal protection of the laws and would deprive the plaintiff of its property without due process of law; and is an invasion of and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish post offices and post roads.

25. That through the medium of an action for a declaratory judgment the issue of the plaintiff's legal rights and the legal rights of its members, and its Division and Branch Associations within the State of New York sought to be affected by procedure on the part of the defendant, Frieda S. Miller as the Industrial Commissioner of the State of New York can be expeditiously and finally determined and that plaintiff has no other adequate remedy at law.

Wherefore, the plaintiff demands judgment that this Court declare and determine as follows:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law as now in existence have no application and do not apply to the plaintiff, Railway Mail Association, its members, and Division and Branch Associations, and that the Railway Mail Association is not a labor organization within the meaning or contemplation of such laws.

[fol. 16] 2. That if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York.

3. That this Court declare and determine the rights of the parties, not herein otherwise specifically asked.

4. And for the further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure against the

plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises with costs.

Dugan & Dugan, Attorneys for Plaintiff, Office and Post Office Address, 90 State Street, Albany, New York.

(Verified by John J. Kennedy as secretary-treasurer on December 23, 1942.)

[fol. 17] IN SUPREME COURT OF NEW YORK, COUNTY OF ALBANY

[Title omitted]

ANSWER

The defendants above named, for an answer to the complaint herein, plead as follows:

1. Defendants hereby deny that the definition of "Labor organization" set forth in paragraph fourteen of the complaint is applicable for any purpose except Article 20 of the Labor Law, and they further deny that it is applicable to the issues involved herein.

2. Defendants likewise deny that the statutory provision alleged in paragraph fifteen of the complaint is applicable to the issues involved herein.

3. Defendants deny each and every allegation of paragraph twenty-four of the complaint; and so much of paragraph twenty-two of the complaint as alleges that the plaintiff is not a labor organization within the spirit or contemplation of the Labor Law or of the Civil Rights Law of the State of New York.

[fol. 18] 4. Defendants lack knowledge or means of information as to the truth or falsity of the allegation contained in the second sentence of paragraph twenty-two of the complaint, and likewise as to certain allegations contained in other paragraphs of the complaint; and defendants believe that the allegations of paragraph two of the complaint are in certain immaterial respects too broad;

but for purposes of this litigation defendants admit all allegations of the complaint except those denied in the preceding paragraphs of this answer.

Wherefore, defendants demand judgment dismissing the complaint, with the costs and disbursements herein.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Defendants, The Capitol, Albany, N. Y.

(Verified by Henry S. Manley, Assistant Attorney-General, on May 28, 1943.)

In Supreme Court of New York, Albany County

Stipulation Presenting Issues to Special Term

It is hereby stipulated, between the parties herein, by their respective attorneys whose names are undersigned: [fol. 19] (1) That the issues arising between the Complaint and the Answer shall be submitted to a Special Term of this Court to be held in the City of Albany, New York, on the 24th day of September 1943, as though upon a motion by the plaintiff for summary judgment as prayed in the Complaint, and upon a cross-motion by the defendants that the Complaint be dismissed.

(2) That such submission shall be upon oral argument, and the primary briefs of each side shall be exchanged at the time of the original hearing; answering briefs shall be exchanged and submitted at such time as the Court may direct.

(3) That any decision made by the Court shall be subject to appeal or other action as fully as though presented by the adverse motions aforesaid.

(4) It is agreed that the defendants may offer in evidence, upon the hearing of the motions and that any Appellate Court may consider as exhibits offered by the defendants, the documents or excerpts therefrom relied upon by defendants and included in the following printed documents, books and pamphlets, without any question being raised on

the part of the plaintiff as to the genuineness or authenticity of such documents, or on the ground that such documents are not the best evidence of their contents:

(a) Pamphlet copy of charter, constitution, etc., 1941-1943, of Railway Mail Association, as printed by it;

[fol. 20] (b) Pamphlet, "The Railway Mail Association and the Railway Postal Clerk," as printed by the Association, without date but apparently soon after 1930;

(c) Periodical, "Railway Post Office," Vols. 42, 43 and 44, being the issues of July, 1940, to May, 1943, inclusive;

(d) Proceedings of American Federation of Labor 1941 annual convention held at Seattle, as printed by the A. F. of L.;

(e) "Handbook of American Trade-Unions," 1936 edition, being Bulletin No. 618 of U. S. Dept. of Labor;

(f) Pamphlet copies of hearings before certain committees of the House of Representatives, as officially printed, the dates and titles of such hearings and the particular testimony being the following:

(I) 1939 Mar. 21. "Substitute Postal Employees," particularly testimony of J. Frank Bennett, Pres. of R. M. A., pages 46-50.

(II) 1940 Mar. 12. "Substitute Postal Employees," particularly testimony of Pres. Bennett, page 13.

(III) 1940 Apr. 5. "Postal Employees Longevity Pay," particularly testimony of Industrial Secty. Strickland, pages 42-44. (This was a joint sub-committee rather than a House Committee.)

(IV) 1940 Apr. 25. "Motor Garage Service," particularly testimony of Pres. Bennett, page 14.

[fol. 21] (V) 1941 Mar. 25. "Basis for Computing Pay for Overtime Work by Railway Mail Laborers," particularly testimony of Vice-Pres. Harvey, page 7.

(VI) 1943 Feb. 25, 26. "Postal Employees Salary Bills," particularly testimony of Mr. Mitiguy, pages 73-74; Pres. Harvey, 92-98; Mr. Wright, 110-113; Mr. Gladstone, 140-142.

(VII) Either side shall have the right to call the Court's attention to any other testimony or statement appearing in said pamphlets designated as I-VI inclusive, given or made in relation to the legislative measures being considered at such hearings.

(g) Printed form, "Application for Membership in the Beneficiary Department of the Railway Mail Association";

(h) Certificate of Affiliation, granted by the American Federation of Labor to the Executive Officers of the plaintiff, bearing date the 22d day of December, 1917;

(i) "The Labor Movement in a Government Industry," by Sterling Denhard Spero, published by George H. Doran Co., N. Y., 1924;

(j) "The Black Worker" (sub-title, "A Study of the Negro and the Labor Movement") by Sterling D. Spero and Abram L. Harris. Columbia University Press, 1931. Quotations from pages 67-69, 57-58, and 12[illegible] 124, typed and submitted herewith, to which defendants shall be limited;

[fol. 22] (k) "The Travelling Post Office," by William J. Dennis, published by Homestead Printing Co., Des Moines, 1916, pages 54-73;

(l) Four telegrams: Berkley to Meany, May 19, 1943; Meany to Berkley, May 20; Berkley to Meany, May 21; Meany to Berkley, May 24;

(m) "How Collective Bargaining Works," a 1942 publication of the Twentieth Century Fund. Only the line on page 961, "Railway Mail Association 22,700," and the material on page 958 to the effect that this purports to be a list of trade unions and statement of their 1941 memberships, taken from the Report of the Executive Council of the A. F. of L. for that year; but plaintiff reserves the right to object to the receiving in evidence or the consideration of the same as exhibits on appeal, upon the ground that the same are incompetent, immaterial and irrelevant to the issues of law raised in this action by the pleadings, except as to the items (a) to (h) inclusive.

(5) It is further agreed that the plaintiff may offer in evidence upon said hearing, and any Appellate Court may consider as exhibits the following documents or excerpts therefrom, viz.:

(1) Memorandum of Governor Herbert H. Lehman in connection with his approval of Chapter 9 of the Laws of 1940 amending the Civil Rights Law;

(2) Message of Governor Herbert H. Lehman to the Legislature, January 3, 1940, in reference to Industry and Labor;

[fol. 23] (3) Proceedings of Convention of 1917 of the Railway Mail Association *in re* adoption of a resolution for affiliation with the American Federation of Labor, and submission on referendum to the membership for approval; the form of ballot upon such referendum, appearing in the "Railway Post Office," together with articles and correspondence in relation to the question of affiliation as contained in the issues of said periodical for the months of January-December, inclusive, in the year 1917.

Dated: Sept. 16, 1943.

Dugan & Dugan, Attorneys for Plaintiff. Nathaniel L. Goldstein, Attorney-General, Attorney for Defendants. By Henry S. Manley, Assistant Attorney-General.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

JUDGMENT

The issues raised by the pleadings in the above-entitled action having duly come on to be heard at a Special Term of this Court held at the Court House in the City of Albany on the 24th day of September, 1943, Justice William H. Murray presiding, pursuant to the Stipulation of the parties, that the same should be submitted as though upon [fol. 24] a motion by the plaintiff for summary judgment as prayed in the Complaint and upon a cross-motion by the defendants that the Complaint be dismissed; and the plaintiff having appeared therein by Dugan & Dugan, by Daniel J. Dugan of counsel, and the defendants having appeared therein by Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, by Orrin G. Judd, Esq., Solicitor-General, Wendell P. Brown, Esq., First Assistant Attorney-General, and Henry S. Manley, Esq., Assistant Attorney-General, of counsel; and the questions involved having been argued orally and in the Briefs of the respective coun-

sel, and the Court after due deliberation having ordered that plaintiff's motion for judgment in its favor be granted and that the defendants' motion to dismiss the Complaint be denied and that a Declaratory Judgment in favor of the plaintiff as prayed in the Complaint be entered accordingly herein.

Now, upon motion of Dugan & Dugan, attorneys for the plaintiff, it is declared and adjudged as follows:

1. That the plaintiff is and was at all the times stated in the Complaint herein a fraternal benefit insurance corporation organized under the laws of the State of New Hampshire and having its principal office at the City of Portsmouth in the State of New Hampshire; and is organized and established to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social [fol. 25] relationship among Railway Postal Clerks, to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provision for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability either as a result of disease, accident or old age.

2. That the plaintiff since September 4, 1913 has been authorized to conduct the business of a fraternal benefit insurance corporation within the State of New York under the applicable provisions of the Insurance Law of said State.

3. That plaintiff is not a labor organization within the meaning or contemplation of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York nor within the meaning and contemplation of Article 20 of the Labor Law of said State.

4. That Article III of the By-laws and Constitution of the plaintiff which provides as follows: "Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race, or a native American Indian, shall be eligible to membership in the Railway Mail Association" is not in conflict with the aforesaid provisions of such Civil Rights Law and Labor Law of the State of New York and

that such laws do not apply to the plaintiff, its division and branch associations, officers or members within the State of New York.

[fol. 26] 5. That applied to the plaintiff, its division and branch associations, officers or members within the State of New York, said provisions of the Civil Rights Law and Labor Law of the State of New York are illegal and have no legal force or effect.

6. That the membership of the plaintiff comprises regular and substitute male Railway Postal Clerks of the United States Railway Mail Service whose appointments and promotions in said Service are made under and pursuant to the Civil Service Law of the Government of the United States and that such clerks are not engaged in private industry.

7. That the Industrial Commissioner of the State of New York has no legal right nor power or authority to regulate or control the business as conducted by the plaintiff within the State of New York.

8. And it is hereby further ordered, adjudged and decreed that the Industrial Commissioner of the State of New York, his deputies, officers, representatives and employees be and they are and each of them is hereby permanently enjoined from taking any action or procedure to apply or enforce the provisions of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York, and/or the provisions of Article 20 of the Labor Law of the State of New York to or against the plaintiff, its division and branch associations, officers or members thereof, within the State of New York, [fol. 27] or of interfering with the plaintiff's right of selection of its members.

Judgment entered November 24, 1943.

William H. Murray, J. S. C.

W. B. Clarke, Clerk.

In Supreme Court of New York, Albany County

Order for Judgment—September 24, 1943

The plaintiff herein having brought this action against Frieda S. Miller, as Industrial Commissioner of the State

of New York, and John J. Bennett, Jr., as Attorney-General of the State of New York, for a declaratory judgment by which this Court should declare and determine as follows:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law as now in existence have no application and do not apply to the plaintiff, Railway Mail Association, its members and Division and Branch Associations, and that the [fol. 28] Railway Mail Association is not a labor organization within the meaning or contemplation of such laws;

2. That if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the Amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York;

3. That this Court declare and determine the rights of the parties, not herein otherwise specifically asked;

4. And for further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking action or procedure against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises with costs; and the present defendants having, by an Order of this Court duly made and entered herein, been substituted in the place and stead of the original defendants without prejudice to the proceedings previously had herein; and the defendants having appeared by Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, and interposed a verified Answer admitting all allegations of the Complaint except that defendants denied that the definition of "labor organization" set forth in paragraph fourteen of the Complaint is applicable for [fol. 29] any purpose except Article 20 of *of* the Labor Law and denied that it is applicable to the issues involved herein; and likewise denied that the statutory provision alleged in paragraph fifteen of the Complaint is applicable to said issues; and further denied each and every allegation of paragraph twenty-four of the Complaint and so much of paragraph twenty-two thereof as alleges that plaintiff is not a labor organization within the spirit or contemplation of

the Labor Law or of the Civil Rights Law of the State of New York, and which said denials raised questions of law only as to the application and legal effect as to the plaintiff of Sections 41, 43 and 45 of the Civil Rights Law and of Article 20 of the Labor Law of the State of New York; and the parties on the issues of law so raised having entered into a Stipulation, dated September 16, 1943, to submit such issues to this Special Term as though upon a motion by plaintiff for summary judgment as prayed in the Complaint, and upon a cross-motion by defendants that the Complaint be dismissed; and such issues having been accordingly presented to the Court; and after hearing Dugan & Dugan, as attorneys for the plantiff, by Daniel J. Dugan, of counsel, and the Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, by Orrin G. Judd, Esq., Solicitor-General, Wendell P. Brown, Esq., First Assistant Attorney-General, and Henry S. Manley, Esq., Assistant Attorney-General, of counsel, for defendants, and due deliberation being had thereon.

[fol. 30] Now, upon reading and filing the Summons and Complaint, the Answer and said Stipulation, and upon motion of Dugan & Dugan, attorneys for the plaintiff, it is hereby

Ordered, that plaintiff's motion for judgment in its favor be and the same hereby is granted; and it is further ordered that defendants' motion to dismiss the Complaint be and the same hereby is denied and that a declaratory judgment in favor of the plaintiff as prayed in the Complaint be entered accordingly herein.

Enter:

William H. Murray, Justice of the Supreme Court.

In Supreme Court of New York, Albany County Special Term

(Justice William H. Murray presiding)

Appearances:

Dugan and Dugan, Esqrs., Attorneys for Plaintiff. (Daniel J. Dugan, Esq., of Counsel.)

Hon. Nathaniel L. Goldstein, Attorney-General, Attorney for Defendants. (Orrin G. Judd, Esq., Solicitor General, Wendell P. Brown, Esq., First Assistant Attorney-

General and Henry S. Manley, Esq., Assistant Attorney-General, of Counsel.)

OPINION—September 24, 1943

[fol. 31] MURRAY, J.:

This action is by plaintiff for a summary declaratory judgment and a countermotion by defendants for a dismissal of the complaint. No questions of fact are involved. The issues are of law. Plaintiff is a membership fraternal beneficiary corporation organized in the year 1898 under the laws of the State of New Hampshire, at which time the corporate name was National Association of Railway Postal Clerks. The present name of plaintiff was assumed by it September 21, 1904. The Certificate of Incorporation states that: "The object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among railway postal clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the railway mail service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Both New Hampshire and New York States have recognized and approved plaintiff's Articles of Incorporation and by-laws to the effect that it has the right to conduct a fraternal insurance business within such States. Membership in plaintiff is restricted to regular male Railway Postal [fol. 32] Clerks or male substitute Railway Mail Postal Clerks of the United States Railway Mail Service, who are of the Caucasian race or are native American Indians. There are approximately twenty-two thousand (22,000) members, classified either as general or non-beneficiary or as beneficiary or full members. Ninety-nine (99%) per cent of the members are beneficiary or full members, and upon death of such a member through external, violent and accidental means, moneys are paid by plaintiff to their designated beneficiaries. Appointments and promotions in the Railway Mail Service are made under and pursuant to the Civil Service Laws of the United States.

There are Division and Branch Associations of plaintiff in various states of the United States, and within the State

of New York, there are established and maintained thirteen (13) Branch Associations. Certain officers and members of a Branch Association of the Second Division in the City of New York have challenged the right of plaintiff to insist on observance of Article III of its Constitution that only persons of the Caucasian race or native American Indians be admitted to membership. The Attorney-General of the State of New York has advised the Industrial Commissioner of the State of New York that plaintiff is a labor organization, and that Article III of its Constitution is invalid and unenforceable within the State of New York. That plaintiff has no valid or legal right to deny to any applicant, otherwise duly qualified, membership by reason of race, color or creed.

[fol. 33] The opinion of the Attorney-General is predicated upon Section 43 of the Civil Rights Law (Chapter 9, Laws of State of New York, 1940) as follows:

> "Discrimination by labor organizations prohibited. As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Also, under Section 41, Civil Rights Law (amended by Chapter 9, Laws of State of New York, 1940 and amended further by Laws of 1941 and 1942).

Section 45 of the Civil Rights Law added by the Laws of the State of New York, 1942, provides:

> "Powers of administration vested in industrial com-
> [fol. 34] missioner. The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-four of this chapter. For this purpose he may use the powers of administration, investigation,

inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries."

Defendants contend that plaintiff is a labor organization, because of the provisions contained in its Articles of Incorporation, in its Constitution, and, because since the year 1917, plaintiff has been a member organization in the American Federation of Labor, having accepted a Certificate of Affiliation from such Federation of Labor and having contributed to the expenses of such organization, and further by participating in its conventions and other activities.

Plaintiff emphatically denies it is a labor organization in fact or in law measured, either by the terms of its charter, its laws or by the nature of the service and work its members perform. Plaintiff maintains that the Labor Law of the State of New York, Chapter 31 of the Consolidated Laws of the State of New York, Section 715 specifically exempts and excludes plaintiff from the category of a labor organization even if it be held that plaintiff is such a body.

Such law of immunity is as follows:

"The provisions of this article shall not apply to the [fol. 35] employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other educational or religious associations or corporations."

Defendants assert that the status of plaintiff is defined clearly by the provisions of Section 43 of the Civil Rights Law, and that such statute is valid and applicable to it. Plaintiff insists that Sections 41, 43 and 45 of the Civil Rights Law alone have no application to it, but are in *pari materia* with other sections of the Labor Law and all should be construed together. That the new provisions of the Civil Rights Law were designed to implement the provisions of the Labor Law dealing with the same subject. Thus construed, the statutes and its subdivisions clearly demonstrate a specific intent to exclude employees of the State from applications to them of the Civil Rights Law, particularly Section 43.

Actions for declaratory judgments are proper where the legality or meaning of a statute or of a ruling made by an administrative official is in dispute and no question of fact involved. (Dun & Bradstreet, Inc. v. City of New York, 276 N. Y. 198; Socony-Vacuum Oil Co. v. City of New York, 247 App. Div. 163; affd. 272 N. Y. 668.) The purpose of a declaratory judgment is to determine disputed jural questions when a genuine controversy exists and when such a judgment will serve a practical end in determining and [fol. 36] stabilizing an uncertain or disputed jural question, either as to present or prospective obligations. (New York Operators v. State Liquor Authority, 285 N. Y. 272; James v. Alderton Dock Yards, 256 N. Y. 298; Sartorious v. Cohen, 249 N. Y. 31; Brownell v. Board of Education, 239 N. Y. 369.)

The basic fundamental element presented for determination is whether plaintiff is a labor organization. Section 43 of the Civil Rights Law, in part, specifically provides that:

> "*No labor organization shall hereafter directly or indirectly* * * * *deny a person or persons membership in its organization by reason of his race, color or creed* or by regulations, practice or otherwise, deny to any of its members by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer." (Consolidated Laws, 1940, Civil Rights Law, Article 4, Section 43.) (Italics mine.)

The term labor organization is defined in Section 43 of the Civil Rights Law in exactly the same words, language and phraseology as is used in Section 701, subdivision 5 of the Labor Law (Consolidated Laws, 1937, Article 20) which is: "That a labor organization means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection."

[fol. 37] What is collective bargaining? Some light is cast upon the meaning and implications of this significant phrase by a statement of some of the recognized evils which flow from refusal to bargain collectively as set forth in Section 700 of the Labor Law as follows:

> "When some employers deny the right of employees to full freedom of association and organization, and re-

fuse to recognize the practice and procedure of collective bargaining, their actions lead to strikes, lockouts and other forms of industrial strife and unrest which is inimical to the public safety and welfare, and frequently endanger public health."

Collective bargaining broadly defined is an agreement between an employer and a labor union which regulates the terms and conditions of employment with reference to hours of labor, wages, and deals also with strikes, lockouts, walkouts, arbitration, shop conditions, safety devices, the enforceability and interpretation of such agreement and of numerous other relations existing between employer and employee.

Plaintiff has only such rights and powers as are expressly granted it by its charter or implied as are necessary in the exercise of its corporate franchise. A proposition which is beyond dispute, and generally recognized is that a corporation cannot enter into or bind itself by a contract prohibited by its charter.

> "Corporations are artificial creations existing by virtue of some statute and organized for the purposes [fol. 38] defined in their charters. * * * A corporation necessarily carries its charter wherever it goes, for that is the law of its existence." (Jennison v. Citizens Savings Bank, 122 N. Y. 135, at page 140.)
>
> "Wherever a corporation goes for business it carries its charter, and the charter is the same abroad that it is at home." (Relfe v. Rundle, 103 U. S. 226.)
>
> "Whatever disabilities are placed on the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere." (McClemont v. Order of Foresters, 222 N. Y. 470, at page 480.)

When the State of New York through its Department of Insurance examined the Articles of Incorporation and the certificates and other evidence of the insurance contract issued by plaintiff to its members and conferred upon it authority to transact insurance business within the State of New York, it determined then and there by such decision both as a matter of fact and law that plaintiff was a beneficial insurance society and not a labor organization.

Section 154, subdivision 1, of the Insurance Law states:

> "No policy of life insurance, industrial life insurance, group life insurance, accident or health insurance, group or blanket accident or health insurance or non-cancellable disability insurance, *no fraternal benefit certificate*, and no annuity or pure endowment [fol. 39] contract or group annuity contract *shall be issued or delivered in this state unless a copy of the form thereof shall have been filed with the superintendent and approved by him* as conforming to the requirements of this chapter and not inconsistent with law." (Italics mine.)

Membership in plaintiff is confined strictly to persons who pass United States Civil Service examinations for the position of Railway Mail Clerk. The primary purpose of Civil Service laws and rules is to promote the good of the public service. The underlying principle of such law is to afford to everyone who has the necessary qualifications an equal opportunity of securing appointment. (People v. Kearney, 164 N. Y. 64; Matter of Mendelson v. Finegan, 168 Misc. 102; affd. Mendelson v. Kern, 278 N. Y. 568.)

Civil Service employees of the United States are protected from summary removal except for cause by Section 652 of the Classified Civil Service Code-Title 5, which is as follows:

> "Removals from classified civil service only for cause. No person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same [fol. 40] in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation;

and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same. * * *"

Not only must charges be preferred, but they must be based on substantial matters. To justify removal the charges must be made in good faith and not as a mere pretext for removal. Against unjust discharge, employees have recourse to the courts for redress, review and reinstatement in their positions. They are shielded by law from the anger and temper of arrogant, dictatorial and disagreeable superiors, who, to vent their spleen or otherwise, prefer fanciful and unsubstantial charges. No such safeguard surround the industrial worker. When discharged, he is discharged, and that is the end of the matter. The courts are not open to him for relief.

To tolerate or recognize any combination of Civil Service employees of the Government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which [fol. 41] our Government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages and conditions under which they will carry on essential services vital to the welfare, safety and security of the citizen. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive and judicial power. Nothing would be more ridiculous.

The reasons are obvious which forbid acceptance of any such doctrine. Government is formed for the benefit of all persons, and the duty of all to support it is equally clear. Nothing is more certain than the indispensable necessity of government, and equally true, that unless the people surrender some of their natural rights to the Government it cannot operate. Much as we all recognize the value and the necessity of collective bargaining in industrial and social life, nonetheless, such bargaining is impossible between the Government and its employees, by reason of the very nature of Government itself. The formidable and familiar weapon in industrial strife and warfare—the strike—is without justification when used against the

Government. When so used, it is rebellion against constituted authority.

Plaintiff is not only not a labor organization within the terms of its charter, but it does not exist nor is it constituted for the purpose in whole or in part of collective bargaining. The mere fact that the American Federation [fol. 42] of Labor issued to plaintiff a Certificate of Affiliation, in no manner repeals, rescinds or amends the charter granted plaintiff to transact insurance business. The acceptance by plaintiff of such Certificate of Affiliation was an *ultra vires* act not within the powers conferred on plaintiff by the State of New Hampshire, and is of no force or effect.

Collective bargaining has no place in government service. The employer is the whole people. It is impossible for administrative officials to bind the Government of the United States or the State of New York by any agreement made between them and representatives of any union. Government officials and employees are governed and guided by laws which must be obeyed and which cannot be abrogated or set aside by any agreement of employees and officials.

President Franklin D. Roosevelt in clear, definite and precise language declares that militant tactics have no place in the functions of any organization of Government employees as follows:

> "Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities. This obligation is paramount.
>
> Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of government until their demands are satisfied. Such action, [fol. 43] looking toward the paralysis of government by those who have sworn to support it, is unthinkable and intolerable." (Letter written to Luther C. Steward, President of National Federation of Federal Employees.)

Section 43 of the Civil Rights Law creates no new civil remedy. Any person who violates any of its provisions

is guilty of a misdemeanor. It must be stricty construed. (People v. Benc, *et al.*, 288 N. Y. 318.) The purpose and intent of the statutes is that "organized labor" must not discriminate as to membership in labor unions by reason of race, color or creed. The purpose of Sections 41, 43 and 45 is penal. They do not provide for civil remedies. These sections were not enacted for the purpose of compelling a fraternal beneficiary insurance association to admit as members every person regardless of race, color or creed.

Tested by the charter of plaintiff, the approval of the State of New York, that plaintiff is a fraternal beneficiary society, the type, kind and character of the employment of the members of plaintiff, the New York State Labor Relations Act and the Civil Rights Law construed together, the demonstrated fact that Civil Service employees of the United States have no right or authority to bargain collectively, the conclusion is unescapable that plaintiff is not a "labor organization" within the purview of Section 43 of the Civil Rights Law. To hold otherwise would be to sanction control of governmental functions not by laws but by men. Such policy if followed to its logical conclu-
[fol. 44] sion would inevitably lead to chaos, dictators and the annihilation of representative government.

Judgment in accordance herewith is granted plaintiff.
Submit order.
Dated: Troy, New York, November 4th, 1943.

* * * * * * *

[fol. 45] In Supreme Court of New York, Albany County

[Title omitted]

Notice of Appeal to the Court of Appeals

Please take notice, that the above-named plaintiff hereby appeals to the Court of Appeals of the State of New York from the judgment entered in this action in the office of the Clerk of the County of Albany on the 13th day of March, 1944, upon the order of the Appellate Division of the Supreme Court, Third Department, which judgment reversed on the law the order and judgment granted at Special Term in favor of the plaintiff declaring that plaintiff is not a

labor organization within the meaning of the Civil Rights Law, Section 43, and restraining defendants from enforcing said statute against the plaintiff, and dismissed the plaintiff's Complaint herein with costs.

Dated: Albany, New York, April 13, 1944.

Dugan & Dugan, Attorneys for Plaintiff-Appellant, Office & Post Office Address, 90 State Street, Albany 7, New York.

[fol. 46] To Hon. Nathaniel L. Goldstein, Attorney-General, Attorney for Defendants, and Wellington B. Clarke, Albany County Clerk.

IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

JUDGMENT ENTERED UPON ORDER OF REVERSAL

The Appellate Division, Third Department, having sent hither its remittitur wherein it is ordered that the order and judgment entered in Albany Clerk's office on November 24, 1943, declaring plaintiff is not a labor organization within the meaning of Civil Rights Law § 43, and restraining defendants from enforcing said statute against the plaintiff, be and are reversed on the law and judgment granted in favor of the defendants dismissing the complaint with costs; and such costs having been taxed at the sum of $136.95; it is now, on motion of Honorable Nathaniel L. Goldstein, Attorney-General, hereby

Adjudged, that said order and judgment be and are reversed on the law and judgment hereby is granted in favor of the defendants dismissing the complaint; and that the defendants have judgment against plaintiff for the sum of $136.95; and have execution therefor.

Wellington B. Clarke, Albany County Clerk.

[fol. 47] IN SUPREME COURT OF NEW YORK, APPELLATE DIVISION

Present: Hon. James P. Hill, Presiding Justice; Hon. F. Walter Bliss, Hon. Christopher J. Heffernan, Hon. Gilbert V. Schenck, Associate Justices.

[Title omitted]

ORDER OF REVERSAL

This appeal from an order and judgment of the Supreme Court, entered in the Albany County Clerk's office on No-

vember 24, 1943, declaring plaintiff is not a labor organization within the meaning of Civil Rights Law § 43, and restraining defendants from enforcing said statute against the plaintiff, having duly come on for argument before this Term of the Appellate Division, and having been argued [fol. 48] for the defendants-appellants by Honorable Nathaniel L. Goldstein, Attorney-General of the State of New York, and for the plaintiff-respondent by Messrs. Dugan & Dugan, 90 State Street, Albany, N. Y., and due deliberation having been had; it is now, on motion of the Attorney-General, hereby

Ordered, that the order and judgment be and are reversed on the law, and judgment granted in favor of the defendants dismissing the complaint with costs.

John S. Herrick, Clerk.

In Supreme Court of New York, Appellate Division

Argued: January, 1944 Term. Decided: —— —, 1944

Hon. James P. Hill, P. J.; Hon. F. Walter Bliss, Hon. C. J. Heffernan, Hon. G. V. Schenck, A. JJ.

Appeal from an order and judgment of the Supreme Court entered in the Albany County Clerk's office on November 24, 1943 declaring plaintiff is not a labor organization within the meaning of Civil Rights Law Section 43 and restraining defendants from enforcing said statute against the plaintiff.

[fol. 49] Hon. Nathaniel L. Goldstein, Attorney General of the State of New York, Attorney for Defendants-Appellants, The Capitol, Albany, N. Y.

Messrs. Dugan & Dugan, Attorneys for Plaintiff-Respondent, 90 State Street, Albany, N. Y.

Opinion for Reversal

Bliss, J.

The question in this case is whether Railway Mail Association is violating Civil Rights Law Section 43. It arises in an action for a declaratory judgment.

The statute:

"Section 43. Discrimination by labor organizations prohibited.

As used in this section, the term 'labor organization' means any organization which exists and is con-

stituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law, prescription, by tacit agreement among its members or other wise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treat-
[fol. 50] ment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Railway Mail Association is a New Hampshire Corporation with branch organizations in New York State. It was organized in 1898 and is a membership corporation. Its corporate purposes are:

"The object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Duties of its Industrial Secretary are:

"To collect and compile useful data relative to wage standards and working conditions in the Industrial Field and Postal Service and other subjects which may be of benefit in promoting the welfare of Railway Postal Clerks.

"To assist in the presentation of grievances per-
[fol. 51] taining to service conditions and endeavor to secure adjustment of such through administrative action.

"To act as the representative of members of the Railway Mail Association before the United States Employees' Compensation Commission."

The opening ritual of an association meeting includes a recital that the membership is pledged to "the betterment of service conditions". An Association publication recites among the achievements of the Association the improvement of the service and conditions of employment. It states that the activity of the Association is directed to "promoting the welfare of railway postal clerks by improving conditions under which they work". It takes credit for having secured many material benefits financially and in working conditions. In the official publication the Industrial Secretary stated: "Only through collective action have workers ever improved wage and working conditions". The Association is classified as a labor union in the official bulletin of the United States Department of Labor. Since 1917 it has been a member of the American Federation of Labor and the certificate of affiliation from that body refers to it as a union. It assumes credit for having secured beneficial legislation. Thus by its own acts the Association has interpreted its charter to include certain phases of collective bargaining and dealing with the Federal Government concerning grievances, terms and conditions of employment and rendering its [fol. 52] members mutual aid and protection. The Association comes clearly within the statutory definition of a labor union.

It is argued that Civil Rights Law Section 43 is limited by Labor Law Section 715 which contains a similar definition of a labor union but excludes employees of the state or any political subdivision thereof. The definition in Section 715 is limited to Article 20 of that law which article is known as the Labor Relations Act. The definition in Civil Rights Law Section 43 is complete in itself and is specifically limited to that section. Each definition is intended only for its respective article or section and they are not interchangeable or supplemental. They are not *in pari materia.*

Now let us inquire whether the plaintiff, a labor union within the meaning of Civil Rights Law Section 43 is violating that section.

Article III of the association's constitution restricts its membership as follows:

"Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race,

or a native American Indian, shall be eligible to membership in the Railway Mail Asociation."

Applicants for membership are required to state in writing their race or color.

Thus it is obvious on the face that the plaintiff offends against the provisions of this statute in that it limits its membership to persons of the Caucasian race or native American Indians.

[fols. 53-54] It is further urged that because plaintiff is permitted to do an insurance business within the State of New York, it is not a labor organization. The insurance features of plaintiff's powers do not alter the fact that it is also a labor organization within the meaning of Civil Rights Law Section 43. These powers are in addition to its other functions and activities and furnish no reason for excluding plaintiff from the operation of this statute.

Nor do we find in Civil Rights Law Section 43 or its application to plaintiff, any violation of the state or federal constitution as plaintiff urges. We see here no attempt on the part of the state to infringe upon the federal power to conduct the postal system or handle the mails. The racial discrimination forbidden by this statute is too far removed from the operations of the federal government even though membership in the plaintiff is limited to railway postal clerks and substitutes. There is no effort on the part of the state to regulate or interfere with the railway mail service. Quite the contrary. It is an effort to prevent racial and religious discrimination in all labor organizations operating within the state.

The order and judgment should be reversed on the law and judgment granted in favor of the defendant dismissing the complaint with costs.

[fol. 55] In Court of Appeals of New York

Railway Mail Association, Appellant,

v.

Edward S. Corsi, as Industrial Commissioner of the State of New York, et al., Respondents

Decided July 19, 1944

Appeal from a judgment, entered March 13, 1944, upon an order of the Appellate Division of the Supreme Court

in the third judicial department which reversed, on the law, a judgment of the Supreme Court, Albany County, in favor of plaintiff, entered upon an order of the court at Special Term (Murray, J.; opinion 180 Misc. 868); (1) declaring, among other things, that plaintiff is not a labor organization within the meaning of section 43 of the Civil Rights Law, and (2) restraining the defendants, the Industrial Commissioner and Attorney-General of the State of New York, respectively, from enforcing said statute against the plaintiff. The Appellate Division directed a dismissal of the complaint and the judgment appealed from so provides. At the commencement of the action Frieda S. Miller was Industrial Commissioner and John J. Bennett, Jr., was Attorney-General. Respondents now hold and occupy their respective offices and have been substituted as parties defendant.

Daniel J. Dugan and *Daniel J. Dugan, Jr.*, for appellant.

Nathaniel L. Goldstein, Attorney-General (*Wendell P. Brown, Orrin G. Judd* and *Henry S. Manley* of counsel), for respondents.

OPINION

LEHMAN, C. J.:

The plaintiff is a foreign corporation organized under the laws of the State of New Hampshire. It conducts its affairs through Division and Branch Associations. Thirteen Branch Associations are located in different parts of the State of New York. Membership in the Association is confined by the terms of its constitution to "any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service who [fol. 56] is of the Caucasian race or a native American Indian." Section 43 of the Civil Rights Law (added by L. 1940 chapter 9) provides in part that "*no labor organization* shall hereafter, directly or indirectly * * * deny a person or persons membership in its organization by reason of his race, color or creed * * * ." Violation of the Statute is a misdemeanor punishable by fine or imprisonment or both. The plaintiff has brought an action for a declaratory judgment "that sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law, * * * do not apply to the plaintiff * * * and that the Railway Mail Association is not a labor organization within the meaning and con-

templation of said laws." The plaintiff also asks the court to declare "that if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York." As "consequential relief" the plaintiff asks that "the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof."

The defendants have admitted all the allegations contained in the complaint except the allegation that the plaintiff is not a "labor organization" within the meaning of the statute. The issues raised by the pleading were by stipulation of the parties submitted to the court at Special Term "as though upon a motion by the plaintiff for summary judgment as prayed for in the complaint and upon a cross motion by the defendants that the complaint be dismissed." No testimony was offered at the hearing and no affidavits were submitted but the parties stipulated that specified documents, books and pamphlets may be considered as exhibits. At Special Term the plaintiff prevailed and judgment in its favor was granted declaring that "plain-[fol. 57] tiff is not a labor organization within the meaning or contemplation of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York nor within the meaning and contemplation of Article 20 of the Labor Law of the State" and enjoining the Industrial Commissioner "from taking any action or procedure to apply or enforce" these statutes. The Appellate Division unanimously reversed on the law the judgment in favor of the plaintiff and granted judgment in favor of the defendants dismissing the complaint. The dismissal of the complaint is based upon the conclusion of the court that the provisions of section 43 of the Civil Rights Law apply to the plaintiff Association and may be enforced against it by the Industrial Commissioner. If we agree with that conclusion we need not consider whether if section 43 of the Civil Rights Law did not apply to it, the plaintiff could obtain in an action for a declaratory judgment the relief it demands.

Section 43 of the Civil Rights Law, which forbids a "labor organization" to deny membership to a person by

reason of his race, color or creed, provides its own definition of the term "labor organization." *As used in that section,* the term "labor organization" means any organization "which exists and is constituted for the purpose in whole or in part of collective bargaining, *or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection.*" The purpose for which the plaintiff is constituted, as formulated in its charter, is "to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; *to better enable them to perfect any movement that may be for their benefit as a class* or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age." (Italics through this opinion are supplied.) [fol. 58] The purpose of "collective bargaining" is not included in the objects for which the plaintiff exists and is constituted. Membership in the plaintiff is confined to mail clerks who are civil service employees and the plaintiff and the defendants agree that the terms and conditions of employment of civil service employees of the Post Office and of other departments or agencies of the Federal, State or City government must be fixed by governmental authority and not by collective bargaining. The purpose of "mutual aid or protection" and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class,* is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the Industrial Secretary of the organization, prescribed in its constitution, is the duty to "assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action." The plaintiff joined the American Federation of Labor, which purports to be a federation of labor unions. It is denominated a labor union in the Bulletin of the Department of Labor of the United States. It is decribed as a trade union or labor organization in publications and reports concerning phases of the labor movement by students and organizations of recognized authority, including a recent publication of the

Twentieth Century Fund. In its own publications the plaintiff Association claims the credit for bringing "to every railway postal clerk many material benefits" and for "many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association," and it points out that "reforms always come as the result of demands from the worker. If better conditions are worth securing, they must come as the result of organized effort." An association constituted for the purpose of "organized effort" and the presentation of concerted demands of workers as a class in order to secure material benefit and reforms in conditions of employment is a "labor organization" both in common parlance and as defined in section 43 of the Civil Rights Law.

[fol. 59] That is true though the association may exist and be constituted "in part" for other purposes. In this case the plaintiff association conducts, pursuant to its charter, "the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit" and it furnishes insurance at cost to its members. Pursuant to its charter and ritual the plaintiff also seeks "to promote closer social relations among Railway Postal Clerks," or rather among white Railway Postal Clerks eligible for membership in its Association. If these were its only objects it would not be a labor organization and would be free to admit to or exclude from membership such persons as it chose, for good reason, for bad reason or for no reason, but it is undisputed that its objects are not so limited. Indeed, in its own publication it has said: "The activity of the Association is directed along two lines, promoting the welfare of railway postal clerks by improving conditions under which they work and providing benefits for disability and death due to accidental means." To carry out the second activity within the State of New York, the plaintiff Association applied for and received permission to do so from the Superintendent of Insurance, though he ruled that no license was necessary. The fact that the Association is lawfully providing insurance within the State for its members does not tend to show that its members are not associated in an organization which exists and is constituted "in part" for objects which mark it as a "labor organization" as defined in the Civil Rights Law.

The plaintiff Association successfully urged at Special Term that the definition in the Civil Rights Law must be

read in connection with the provision of article 20 of the Labor Law entitled "New York State Labor Relations Act" and that so read the Association is excluded from its terms. Article 20 of the Labor Law is enacted primarily as an appropriate measure for "the protection by law of the right of employees to organize and bargain collectively" (Labor Law, Sec. 700). Like section 43 of the Civil Rights Law, [fol. 60] article 20 of the Labor Law provides its definition "*when used in this article*" of the term "labor organization" and other terms. (Sec. 701.) The words "when used in this article" show a legislative intent to create special definitions of limited application which are not to be enlarged or restricted by other definitions of the same terms contained in other statutes or in other parts of the Labor Law. (*Metropolitan Life Ins. Co. v. State Labor Relations Board*, 280 N. Y. 194.)

The definitions of "labor organization" in section 43 of the Civil Rights Law and in article 20 of the Labor Law are the same except in one clause and the variation is not here material. The contention of the plaintiff Association is not based upon that variation. Its reliance is upon section 715 of the Labor Law which provides: "The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

The purpose of section 715 is expressed in plain language. It does not purport to change the definition of the term "labor organization." It does not in terms or in effect prohibit the formation of labor organizations as so defined among the employees of any employer, but it does exclude *from the application of article 20* of the Labor Law the employees in specified employment and it denies to such employees, whether members of labor organizations or not, the benefit of the provisions of the statute devised for "the protection of employees' right to organize and bargain collectively." The exclusion of some categories of employees from the application of the statute constitutes a legislative determination that the "public policy of the state" as "declared" in the same article would not be promoted by "en-

couraging the practice and procedure of collective bargaining" by government employees. The grounds for that determination are plain. Section 43 of the Civil Rights [fol. 61] Laws is intended to promote the public policy securing equality of industrial opportunity for workers, regardless of race, creed or color. There is no indication either in the Civil Rights Law or in the Labor Law that categories of workers who are not entitled to avail themselves of the benefit of the provisions of a statute enacted for the protection of a right of collective bargaining may not lawfully form "labor organizations" for their "mutual aid or protection" in their employment and for the presentation of their grievances as a class and of demands for reform in the terms and conditions of their employment, nor is there anything in the Civil Rights Law which suggests that workers within categories excluded from the application of the State Labor Relations Law are also excluded from the application of the Civil Rights Law.

There remains only the question whether a statute intended to restrict discrimination in membership by labor organizations is constitutional if applied to the plaintiff Association. The plaintiff does not challenge the validity of a statute which would prohibit such discrimination by "labor organizations" to which the provisions of article 20 of the Labor Law apply. It challenges the validity of the statute, if construed in manner broad enough to include the plaintiff in its scope, on the ground that the exclusion of categories of workers from the application of article 20 and their inclusion in the application of section 43 creates "arbitrary, capricious and unreasonable classifications" which denies to the plaintiff organization the equal protection of law guaranteed by the Fourteenth Amendment of the Federal Constitution and denies to the plaintiff due process of law. The plaintiff challenges the validity of the statute also on the ground that it constitutes an invasion by the State into the field of postal service which under the Constitution is within the sole jurisdiction of the government of the United States.

[fol. 62] The plaintiff in its brief makes abundantly clear the grounds upon which the Legislature might reasonably deny to civil service workers in the employ of a governmental unit the benefit of a statute intended for the protection of the right of workers in other employment to bargain

collectively with their employers. In its own official publication the plaintiff also makes abundantly clear the grounds upon which the categories of workers excluded from the application of the provisions of article 20 of the Labor Law may reasonably be included in the application of the provisions of the Civil Rights Law designed to give workers of every race, creed or color equality of opportunity to join organizations intended for collective action to improve the condition of employment of the workers. In its official magazine, "Railway Post Office," the plaintiff published an article by its Industrial Secretary in which it said: "Only through collective action have workers ever improved wage and working standards, but it is particularly true today that the worker whether in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness." Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard.

The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has recognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all labor organizations within this State, including organizations of [fol. 63] workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution.

The judgment should be affirmed, with costs.

Loughran, Rippey, Lewis, Conway, Desmond and Thacher, J.J., concur.

Judgment affirmed.

[fol. 64] IN COURT OF APPEALS OF NEW YORK

[Title omitted]

REMITTITUR—July 19, 1944

Read 7-31-44. F. B., JSC.

Be It Remembered, That on the 10th day of May in the year of our Lord one thousand nine hundred and forty-four, the appellant in this cause, came here unto the Court of Appeals, by Dugan & Dugan, its attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Edward S. Corsi, as Industrial Commissioner of the State of New York, and another, the respondents in said cause, afterwards appeared in said Court of Appeals by Nathaniel L. Goldstein, Attorney-General, their attorney.

[fol. 65] Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Daniel J. Dugan of counsel for the appellant, and by Mr. Wendell P. Brown of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed with costs as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

John Ludden, Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, July 19, 1944:

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

John Ludden, Clerk. (Seal State of New York Court of Appeals.)

[fol. 66] IN SUPREME COURT OF NEW YORK, ALBANY COUNTY

Present: Hon Francis Bergan, Justice Presiding.

RAILWAY MAIL ASSOCIATION, Plaintiff,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Defendants

ORDER ON REMITTITUR OF THE COURT OF APPEALS—July 31, 1944

The plaintiff above named having appealed to the Court of Appeals from the judgment entered in this action in the office of the Clerk of the County of Albany on the 13th day of March, 1944, upon the order of the Appellate Division of the Supreme Court, Third Department, which judgment reversed on the law the order and judgment granted at Special Term in favor of the plaintiff declaring that plaintiff is not a labor organization within the meaning of the Civil Rights Law, Section 43, and restraining the defendants from enforcing said statute against the plaintiff, and dismissed the plaintiff's complaint herein, with costs; and the said appeal having been argued at the Court of Appeals by Daniel J. Dugan, Esq., of counsel for the appellant, and by Wendell P. Brown, First Assistant Attorney-General, of counsel for the respondents; and after due deliberation the Court of [fol. 67] Appeals having made its decision thereupon and having ordered and adjudged that the order of the Appellate Division of the Supreme Court so appealed from be affirmed, with costs, and having further ordered that the proceedings and record be remitted to the Supreme Court, there to be proceeded upon according to law,

Now, on reading and filing the said remittitur, and upon motion of Nathaniel L. Goldstein, Attorney-General of the State of New York, attorney for the defendants, it is

Ordered, That the said order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court.

Francis Bergan, J. S. C.

[fol. 68] In Supreme Court of New York, County of Albany

Railway Mail Association, Plaintiff,

against

Edward S. Corsi, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Defendants

Judgment on Remittitur of the Court of Appeals

The appeal taken to the Court of Appeals from the judgment entered in this action in the office of the Clerk of the County of Albany on the 13th day of March, 1944, upon the order of the Appellate Division of the Supreme Court, Third Department, which judgment reversed on the law the order and judgment granted at Special Term in favor of the plaintiff declaring that plaintiff is not a labor organization within the meaning of the Civil Rights Law, Section 43, and restraining defendants from enforcing said statute against the plaintiff, and dismissed the plaintiff's complaint herein, with costs, having been duly argued before the Court of Appeals, which has adjudged that the said judgment so appealed from be affirmed, with costs, and that the record and proceedings therein be remitted to the Supreme Court, there to be proceeded upon according to law; and the Court of Appeals having sent hither its remittitur, bearing date July 19, 1944, consisting of the record on appeal thereto and a copy of the judgment of the Court of Appeals rendered thereon; and an order having been duly entered this day by the Supreme Court, making the order and judgment of the Court of Appeals the order and judgment of this Court; and defendants' costs having been duly taxed at the sum hereinafter stated, [fol. 69] Now, on motion of Nathaniel L. Goldstein, Attor-

ney-General of the State of New York, attorney for the defendants, it is

Adjudged That the said order and judgment of the Court of Appeals be, and the same hereby are, made the order and judgment of this Court, and that the above named defendants Edward S. Corsi, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, recover from the above named plaintiff, Railway Mail Association, the sum of One Hundred Twenty-six ($126.00) Dollars, as and for their costs of said appeal to the Courts of Appeals, and have execution therefor.

W. B. Clarke, Clerk.

[fol. 70] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

RAILWAY MAIL ASSOCIATION, Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and Nathaniel L. Goldstein, as Attorney-General of the State of New York, Appellees

PETITION FOR APPEAL

To Hon. Robert H. Jackson, a Justice of the Supreme Court of the United States:

The above-named Railway Mail Association, a corporation organized under the laws of the State of New Hampshire, feeling aggrieved by the judgment of the Supreme Court of the State of New York entered in the Clerk's Office of the County of Albany July 31, 1944 upon the remittitur and final decision of the Court of Appeals of the State of New York, handed down July 19, 1944, in this cause, which said court is the highest court of the State of New York in which a decision in this suit and matter could be had, hereby prays for the allowance of an appeal herein to the Supreme Court of the United States to the end that said judgment and the decision of the said Court of Appeals upon which the same was entered, may be there reviewed and considered and justice done this appellant, and that an order be made allowing such appeal, fixing the

amount of the bond required of the petitioner herein on such appeal, and that a transcript of the record proceedings and papers in this cause duly authenticated by the Clerk of the Supreme Court of the State of New York, Albany [fol. 71] County, under the hand and seal of such Court may be sent to the Supreme Court of the United States as provided by law. The Court of Appeals affirmed the judgment entered in this cause in the office of the County Clerk of Albany County, New York, March 13, 1944, upon the order of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, said judgment having reversed the judgment in favor of the plaintiff granted at Special Term of the Supreme Court, and directed the dismissal of the complaint herein with costs and remitted the records and proceedings to the Supreme Court of the State of New York and that thereupon the said Supreme Court of the State of New York, Albany County, on July 31, 1944 ordered that the order and judgment of the Court of Appeals be made the order of the said Supreme Court. That thereby said judgment became and is the final judgment of the highest court of the State of New York in which a decision in this cause could be had and that the Supreme Court of the State of New York has possession of the record in this cause.

Petitioner respectfully shows that this cause is one in which a review can be had in the Supreme Court of the United States as a matter of right in that a final judgment has been rendered in the highest court of the State of New York in which a decision could be had, and that the validity of statutes of the State of New York was drawn in question on the ground of their being repugnant to the Constitution of the United States and the decision was in favor of their validity.

Opinions rendered by the Courts below are reported in 180 Misc. 868, Special Term Opinion, and the opinion of the Appellate Division is reported in 267 App. Div. 470 and in the Court of Appeals, 293 N. Y. 315.

Copies of such opinions are annexed hereto.

Respectfully submitted, Railway Mail Association, by C. M. Harvey, President. Daniel J. Dugan, of Counsel.

[fol. 72] IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

[Title omitted]

ASSIGNMENT OF ERRORS

The appellant, Railway Mail Association, assigns the following errors in the record and proceedings had in this case:

The Court of Appeals erred:

1. In holding that said Section 43 of said Civil Rights Law of the State of New York as applied to the appellant, its division and branch associations and members was not repugnant to the provisions of Article 1, Section 8, Subdivision 7 of the Constitution of the United States granting to the Congress of the United States the exclusive power for the enactment of legislation in establishing postoffices and post-roads; and in denying and overruling the appellants' contention that the postoffice and post-roads clause aforesaid and the laws enacted by Congress pursuant thereto were not exclusive.

2. In holding that the appellant and its division and branch associations and members within the State of New York whose membership is drawn from the classified service of the Federal Government in the Railway Mail Department of the Post Office Department of the United States are subject to the provisions of Sections 43 and 45 of the Civil Rights Law of the State of New York.

[fol. 73] 3. In holding that said Sections 43 and 45 of said Civil Rights Law as applied to the appellant and its members was not an attempt to regulate an instrumentality of the Federal Postal System.

4. In holding that said Sections 43 and 45 of the said Civil Rights Law as applied to the appellant, its division and branch associations and its members within the State of New York had no relation to the postoffice and post-roads clause of the Constitution of the United States.

5. In holding that the provisions of Sections 41, 43 and 45 of the Civil Rights Law were not repugnant to the due process guarantee of the Fourteenth Amendment to the Constitution of the United States.

6. In holding that said Sections of the Civil Rights Law did not constitute an arbitrary, unlawful and unreasonable abridgment of the property rights of the appellant and its division and branch associations and of their liberty of contract, and did not deprive them of their property within the State of New York in violation of the due process clause of the said Fourteenth Amendment to the Constitution of the United States.

7. In holding that the said provisions of the Civil Rights Law as applied to the appellant, its division and branch associations and members, did not create arbitrary, capricious and unreasonable regulations contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States, and did not create arbitrary, capricious, unreasonable and discriminatory classifications contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

8. In holding that the provisions of said Civil Rights Law did not deprive the apppellant of its property without due process of law under the Fourteenth Amendment aforesaid.

9. In affirming the judgment entered in the Supreme Court of the State of New York upon the order of the [fol. 74] Appellate Division of the Third Judicial Department of said State which dismissed the complaint of the plaintiff in this action.

Prayer for Reversal

Because of the foregoing errors, the appellant, Railway Mail Association, prays that the said judgment of the Supreme Court of the State of New York and the decision of the Court of Appeals of the State of New York upon which said judgment was entered, in the above-entitled cause, be reviewed by the Supreme Court of the United States and reversed and judgment rendered in favor of the appellant, with costs in all courts.

Railway Mail Association, by C. M. Harvey, President. Daniel J. Dugan, of Counsel.

[fol. 75] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The appellant in the above-entitled action having prayed for the allowance of an appeal herein to the Supreme Court of the United States from the judgment of the Supreme Court of the State of New York entered in the office of the Clerk of Albany County, New York, on the 31st day of July, 1944, upon the remittitur and final decision of the Court of Appeals of the State of New York bearing date July 19, 1944, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction on appeal pursuant to the statutes of the United States and the rules of the Supreme Court of the United States, it is

Ordered, that an appeal be and the same hereby is allowed to the Supreme Court of the United States as provided by law, and it is further

Ordered, that the Clerk of the Supreme Court of the County of Albany and State of New York, to which Court the record herein has been remitted, shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that the transcript shall reach [fol. 76] said Court within forty days of the date of this order; and it is further

Ordered, that security for costs herein be fixed in the sum of Five Hundred (500) Dollars.

Dated, October 17, 1944.

Robert H. Jackson, A Justice of the Supreme Court of the United States.

[fols. 77-78] Citation in usual form, showing service on Edward S. Corsi, et al., omitted in printing.

[fol. 79] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1944

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Supreme Court of the State of New York, Albany County:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above-entitled cause and to include in such transcript the following papers:

1. Complaint.
2. Answer.
3. Stipulation Presenting Issues.
4. Judgment at Special Term.
5. Order for Judgment at Special Term.
6. Opinion of Justice Murray at Special Term.
7. Notice of Appeal to the Appellate Division of the Supreme Court State of New York.
8. Judgment of Reversal Entered upon Order of Appellate Division.
9. Order of Reversal in Appellate Division.
10. Opinion of Appellate Division.
11. Notice of Appeal to the Court of Appeals.

[fol. 80] 12. Opinion of Court of Appeals.

13. Remittitur of the Court of Appeals.
14. Order on Remittitur of the Court of Appeals.
15. Judgment on Remittitur of the Court of Appeals.
16. Order Allowing Appeal to the Supreme Court of the United States.
17. Petition for Appeal, Assignment of Errors and Prayer for Reversal.
18. Statement as to Jurisdiction on Appeal.
19. Statement Opposing Jurisdiction and Motion to Dismiss or Affirm.
20. Bond on Appeal.
21. Citation and Return Thereon.

Dated at Albany, New York, on October 26, 1944.

Daniel J. Dugan, Attorney for Appellant, 90 State Street, Albany 7, New York.

To: Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Appellees, The Capitol, Albany, New York.

[fol. 81] STATE OF NEW YORK,
City & County of Albany, ss:

Margaret Hofelich, being duly sworn, deposes and says that she is over the age of twenty-one years; that on the 26th day of October, 1944, she served the annexed Praecipe upon Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York and Attorney for the Appellees, by depositing a copy thereof in a postoffice box maintained by the United States Government in The National Savings Bank of the City of Albany, New York, contained in a securely closed post-paid wrapper directed to said Hon. Nathaniel L. Goldstein, Attorney-General, The Capitol, Albany, New York, Attention: Wendell P. Brown, Esq., First Assistant Attorney-General.

Margaret Hofelich.

Sworn to before me this 26th day of October, 1944. Evelyn A. Croscup, Comr. of Deeds, Albany, New York.

[fol. 82] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 83] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PORTIONS OF THE RECORD TO BE PRINTED—Filed November 18, 1944

SIR:

Please Take Notice, that the within is a true copy of the appellant's statement of points to be relied upon, and designation of the portions of the record to be printed.

Dated at Albany, New York, November 15th, 1944.

Daniel J. Dugan, Attorney for Appellant, Office and Post Office Add: 90 State Street, Albany 7, New York.

To: Hon. Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Appellees, The Capitol, Albany, New York.

Comes now the appellant in the above-entitled cause and states that the points upon which it intends to rely herein are the same as the nine items listed in the Assignment of Errors heretofore filed.

[fol. 84] And the appellant further states that it considers that the portions of the record necessary for the consideration of this cause are all the same portions listed in the transcript of record filed herein and therein indicated as the portions of the record to be included in said transcript except the Bond on Appeal.

Daniel J. Dugan, Counsel for Appellant.

Service of a copy of the foregoing Statement and Designation is acknowledged this 15th day of November, 1944.

Nathaniel L. Goldstein, Attorney-General of the State of New York, Attorney for Appellees.

[fol. 84a] [File endorsement omitted.]

[fol. 85] Supreme Court of the United States

Order Postponing Further Consideration of the Question of Jurisdiction—December 18, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court is postponed to the hearing of the case on the merits.

Endorsed on cover: Enter Daniel J. Dugan. File No. 49,144. New York Supreme Court. Term No. 691. Railway Mail Association, Appellant, vs. Edward S. Corsi, as Industrial Commissioner of the State of New York, et al. Filed November 18, 1944. Term No. 691 O. T. 1944.